IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1494 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JALUNDRANANA KEDWANI MANDAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1494 of 1991
MS KRINA THAKKAR for MR YOGESH S LAKHANI
for Petitioner No. 1
MR K.G.SHETH, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 20/12/2001

ORAL JUDGEMENT

By means of this petition filed under Article 226

of he Constitution, petitioner, a public Trust, registered under the Bombay Public Trusts Act, seeks to challenge the validity, legality and correctness of the action of the respondents by which they have withheld the maintenance grant of the post-basic school run by the petitioner Trust for the fiscal years 1988-89, 1989-90 and 1990-91 as the same being illegal, arbitrary, unjust, null and void, discriminatory and violative of Article 14 of the Constitution of India.

2. The petitioner is a public Trust registered under the Bombay Public Trusts Act and its registration No. is E/5824/Ahmedabad. The petitioner Trust was getting the maintenance grant from the Education Department and the post basic school run by the petitioner Trust has got the full grant-in-aid upto fiscal year 1987-88. The petitioner states that the Education Department has withheld the maintenance grant of the above mentioned post basic school situated at Jalundranana by taking a wrong and illegal objection that the petitioner Trust does not possess 15 acres of land on ownership basis at the above mentioned post basic school. The District Education Officer has therefore not released the maintenance grant for the above mentioned post basic school for the fiscal year 1988-89, 1989-90 and 1990-91 and has thus illegally withheld the maintenance grant without scrutinising the facts and the real object behind the grant-in-aid Code. It is further averred that however, the first instalment of the maintenance grant for the year 1988-89 was released but thereafter the said grant was unjustifiably and illegally withheld. It is averred by the petitioner Trust that the Jalundranana Gram Panchayat has by unanimous resolution dated October 12, 1985 resolved to allot 5 acres of agriculture land to the school run by the petitioner Trust for the purpose of imparting the education. The petitioner Trust further states that by another resolution dated October 22, 1984 by the same Gram Panchayat resolved to allot 10 acres of land to the post basic school run by the petitioner Trust and the proceedings for the same are still continued in the office of the Collector. The copies of both the resolutions are annexed as Annexure-A and B to the petition respectively. It is further averred that the petitioner Trust has right to receive the grant for the above mentioned post basic school under the grant-in-aid Code. The petitioner further submits that prior to withholding of the maintenance grant, the Education Department was paying the maintenance grant as well as all other grants to the above mentioned post basic school for various years. The action of withholding the maintenance grant, having paid the same for a

considerably long period, is arbitrary, discriminatory and violative of Article 14 of the Constitution of India. It is pointed out by the petitioner Trust that Special Civil Application No. 6129 of 1990 is filed before this Court wherein also the maintenance grant was withheld by the same respondents and in that petition this Court is pleased to direct the respondents by way of interim relief to release the maintenance grant of the post basic school for the fiscal years 1988-89, 1989-90 and they were restrained from withholding the maintenance grant of the post basic schools in question in that petition. A copy of the order passed by this Court in the said Special Civil Application is annexed at Annexure-E to this petition. It is further prayed in this petition that the action of respondent No. 3 of withholding the maintenance grant of the post basic school run by the petitioner Trust at Jalundranana, Taluka dehgam, Dist. Ahmedabad, is illegal, arbitrary, unjust, null and void, discriminatory and violative of Article 14 of the Constitution of India.

3. It is contended by Ms Krina Thakkar, learned advocate for the petitioner, that the petitioner school satisfies both the conditions i.e. firstly the main subject of the school is teaching agriculture and secondly it maintains 15 acres of land which was allotted by the Gram Panchayat in 1984 and 1985. What is emphasized by the learned advocate for the petitioner is that the petitioner was given the grant upto fiscal year 1987-88 and first instalment of 1988-89 was also released. Thereafter respondent No.3, that is, District Education Officer has withhold the grants stating that the school is not owning 15 acres of land. What is stressed by the learned advocate is that nowhere in rule 125 of the Grant-In-Aid Code it is mentioned that a school should own 15 acres of land. It is also pointed out by the learned advocate that in an identical matter, this Court was pleased to allow the petition. In support of her contention she placed reliance on the decision of this Court reported in the case of SANSKARBHARTI AMRAPUR V. GOVT. OF GUJARAT, 2001(1) GLH 255. In the said judgement, facts are identical to the present case and this Court has taken a view that it is not necessary to own 15 acres of land in the name of the Trust or school. She, therefore, urged to allow this petition.

4. Mr. K.G.Sheth, learned AGP has conceded that the judgement relied upon by the learned advocate for the petitioner in the case of SANSKARBHARTI AMRAPUR V. GOVT. OF GUJARAT (supra) is squarely applicable to the facts of the present case. Therefore, necessary direction may be

issued in the present case as issued in the said case.

5. I have considered the submissions advanced by the learned advocates appearing for the parties. I have perused the averments made in the petition as well as the documents annexed therewith including the interim order dated November 30, 1990 passed by this court in Special Civil Application No. 6129 of 1990 and, also considered the judgement cited at the bar.

6. Mr. K.G.Sheth, learned AGP fairly conceded that the interim order dated November 30, 1990 recorded in Special Civil Application No. 6129 of 1990 has now become final order in view of the fact that the said petition has been allowed in view of the reported decision in the case of SANSKARBHARTI AMRAPUR V. GOVT. OF GUJARAT (supra).

7. In para 5 of the judgement rendered in the case of SANSKRABHARTI AMRAPUR V. GOVT. OF GUJARAT (supra), this Court has observed as under :

> "The question as to whether the adequate area of land as required by Rule 125 was lawfully possessed or not in all these cases cannot be gone into at this stage by this Court. Since the authorities had proceeded on an erroneous footing that ownership of land was the basic requirement for the purpose of eligibility for the grant under Rule 125, it would be necessary for them to reconsider the matter in light of decision of this Court that even lawful possession of the land by the school would qualify the school for the grant under the said Rule if it maintained 15 acres of such land for the purpose of teaching agriculture as a main craft and other requirements of Rule 125 were satisfied. In this view of the matter, the impugned orders and actions in all these petitions to the extent that grants are withheld or refused on the ground of want of ownership of the land, are hereby set aside and the concerned authorities are directed to reconsider the cases of all these petitioners in the light of the observations made in this judgement and pass fresh orders within two months from the date of the receipt of the writ of this order in accordance with law. It will be open for the petitioners to make representations in their respective cases as stated by their learned Counsel within two weeks from today. If such representations are made, they will be duly

considered before making the order. Rule is made absolute accordingly with no order as to costs in each of these petitions."

8. On the facts and in the circumstances emerging from the record of the case and more particularly, the ratio laid down by this Court in the case of SANSKARBHARTI AMRAPUR V. GOVT. OF GUJARAT (supra), I am of the opinion that the impugned action taken by the respondents deserves to be quashed and set aside by directing the petitioner to make a representation to the authority concerned within a period of four weeks hereof which shall be decided in accordance with law within a period of two months thereafter.

9. For the foregoing reasons, petition succeeds and accordingly it is allowed. The impugned action of the authority of withholding the maintenance grant of the petitioner School is hereby quashed and set aside and the petitioner is directed to make a representation before the authority concerned within a period of four weeks hereof which shall be decided by the authority within a period of two weeks thereafter in light of the observations made in the reported decision in the case of SANSKARBHARTI AMRAPUR V. GOVT. OF GUJARAT (supra) as well as this judgement and in accordance with law. Rule is made absolute accordingly. No order as to costs.

(A.M.Kapadia, J)

Jayanti*